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Datasheet for the decision
of 12 September 2023

Case Number: T 2367/22 - 3.5.01

Application Number: 18156229.9

Publication Number: 3355265

IPC: G06Q50/30, G06Q10/04,
                                B61L25/02, B61L27/00,
                                G06Q30/02, G06Q30/04,
                                G06Q50/26, G08G1/005, G06N5/02,
                                G08B19/00

Language of the proceedings: EN

Title of invention:
TRAVEL PROCESS PREDICTION SYSTEM AND COMPUTER PROGRAM

Applicant:
The Aqua Enterprise Company

Headword:
Travel process prediction/THE AQUA ENTERPRISE COMPANY

Relevant legal provisions:
EPC Art. 56
RPBA 2020 Art. 12(6), 13(2)

Keyword:
Inventive step - predicting travel time (no - not technical)

Decisions cited:

T 1148/18, T 1670/07, T 1798/13

Case Number: **T 2367/22 - 3.5.01**

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 12 September 2023

Appellant: (Applicant)	The Aqua Enterprise Company 4 Urikura Kisarazu-shi, Chiba 292-0007 (JP)
Representative:	Patentship Patentanwaltsgesellschaft mbH Elsenheimerstraße 65 80687 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 1 June 2022 refusing European patent application No. 18156229.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	W. Chandler
Members:	R. Moser
	C. Schmidt

Summary of Facts and Submissions

I.   This case concerns the applicant's appeal against the
        decision of the examining division to refuse the
        European patent application No. 18156229.9.

II.   The examining division held that the independent claims
        of the main and auxiliary requests 1 to 21 were not
        inventive over a general-purpose networked computer
        system. In essence, they considered that predicting a
        travel process of a traveler was a non-technical
        activity and that the produced output, such as an
        estimated passage time, did not serve a technical
        purpose. The examining division further held that claim
        1 of auxiliary request 22, filed on 28 February 2022,
        was not inventive over D6 (US 2007/0229272 A1) and that
        the then auxiliary requests 23 to 27, filed during the
        oral proceedings on 28 April 2022, were not admissible
        under Rule 137(3) EPC.

III.   In the statement setting out the grounds of appeal,
        filed on 4 October 2022, the appellant requested that
        the decision be set aside and a patent be granted on
        the basis of the refused main or auxiliary requests 1
        to 21, or newly filed auxiliary requests 22 to 26, or
        auxiliary request 27 which had not been admitted into
        the examination proceedings under Rule 137(3) EPC.

IV.   In the communication accompanying the summons to oral
        proceedings, the Board tended to agree with the
        examining division that the main and auxiliary requests
        1 to 21 were not inventive over a general-purpose
        networked computer system and that claim 1 of auxiliary
        request 22 was not inventive over D6. The Board further
        tended to consider that auxiliary requests 23 to 27,

irrespective of whether or not they met the
requirements of Article 123(2) EPC, were unclear and
not suitable to overcome the inventive step objection.

V.   In a letter dated 11 August 2023, the appellant
        submitted new auxiliary requests 28 to 43 and provided
        arguments in favour of inventive step.

VI.   Oral proceedings took place by videoconference on
        12 September 2023. The appellant's final requests were
        to set aside the decision and to *remit the case to the
        examining division for further prosecution* on the basis
        of the above-mentioned requests (main and 43 auxiliary
        requests).

        At the end of the oral proceedings the Chairman
        announced the Board's decision.

VII.   Claim 1 of the main requests reads:

        *A travel process prediction system predicting a travel
        process of a travel object traveling with
        transportation repeatedly operated at specific time,
        characterized by comprising:*
            *a means for specifying passage time at which a
        travel object actually passes through each of a
        plurality of passage points at a departure/arrival
        facility of transportation;*
            *a means for acquiring transportation specifying
        information specifying transportation used by the
        travel object;*
            *a means for acquiring situation information
        indicating a situation in which the travel object uses
        the transportation;*
            *a means for storing passage time at each passage
        point, transportation specifying information and*

situation information, in an associated manner for each of a plurality of travel objects;

a means for extracting, from the means, a plurality of combinations of passage time concerning a specific passage point and other information associated with the passage time; and

a means for calculating, based on the extracted plurality of combinations, an estimate value of passage time at which a travel object passes through a specific passage point under a specific condition by conducting a regression analysis for obtaining a relationship between the passage time and said other information, or a calculation of a mean or variance of the passage time.

VIII. Claim 1 of auxiliary request 9 essentially differs from claim 1 of the main request by defining that the means for specifying passage time in the first feature, in addition, are

configured for checking a passage of a travel object

and by adding the following features at the end of the claim:

a means configured for storing an explanatory text which explains a result of a statistical calculation and which is associated with a feature of information used in the statistical calculation and a result of the statistical calculation;
a means configured for extracting the explanatory text in accordance with the feature of information actually used in the statistical calculation and the result of the actual statistical calculation; and
an output means configured for processing the

*calculated estimate value and the extracted explanatory
text for outputting from the output means.*

IX.   Claim 1 of auxiliary request 22 reads:

A travel process prediction system, comprising:
    *a travel process prediction apparatus (1)
performing processing for statistically predicting a
travel process of a travel object, which corresponds to
an estimate value or a statistical test result
conserning [sic] passage time, elapsed time or results
of comparison;*
    *a communication network (N) connecting the travel
process prediction apparatus (1);*
    *one or a plurality of check machines (21)
configured for issuing or reading an ID of a travel
object, checking a passage of the travel object and
detecting date and time of the passage;*
    *an information acquiring apparatus (2) connected to
the or a plurality of check machines (21) through a
communication network installed at a departure/arrival
facility, each check machine (21) being configured to
transmit the issued or read ID and the detected date
and time to the information acquiring apparatus (2),
which stores the received information therein, wherein
the information acquiring apparatus (2) is connected to
the communication network (N) and communicates with the
travel process prediction apparatus (1) through the
communication network (N);*
    *a transportation information storing apparatus (4)
configured to store information related to
transportation, the transportation information storing
apparatus (4) being connected to the communication
network (N);*
    *a weather information storing apparatus (5)
configured to store information related to the weather,*

the weather information storing apparatus (5) being
connected to the communication network (N); and
an input/output device (7) configured to
communicate with the travel process prediction
apparatus (1) through the communication network (N) to
output information including a prediction result
obtained by the travel process prediction apparatus
(1).

X.   The appellant's arguments are discussed in detail in
        the reasons for the decision.

Reasons for the Decision

The invention

1.   The invention concerns a system for more accurately
        predicting a travel time ("travel process"), by
        including predictions of the time spent waiting at
        various points during the trip, such as in the
        departure or arrival hall at an airport (see paragraphs
        [0004], [0005] and [0026] of the A1-publication).

2.   The prediction relies on historical data, specifically
        the "passage time", which denotes instances when
        travelers pass through different checkpoints at the
        airport, along with corresponding "transportation
        specifying" (e.g. flight) and "situation" (e.g.
        weather) information – see Figure 8. It employs
        regression analysis along with statistical tests for
        means and variances.

3.   The prediction results are, for example, an estimated
        time for a traveller to reach an arrival gate at the
        airport ("estimate value of passage time"), the time
        elapsed between passage points or an estimated duration

between the completion of boarding and passage at a
specific passage point.

Moreover, based on the outcome of statistical tests,
the user is provided with advice ("explanatory text" in
claim 1 of auxiliary request 9), such as "Make travel
plan with sufficient time to spare" (see Figure 19,
"ADVICE T").

Main request, claim interpretation

4.   The wording of claim 1 is very general and, thus,
        admits a broad interpretation. It defines a system for
        predicting a travel process of a travel object
        comprising various means for "specifying passage time",
        "acquiring transportation specifying information",
        "acquiring situation information" or "calculating ...
        an estimate value of passage time". The means are
        claimed in functional terms, lacking specific technical
        details.

5.   The appellant argued that, considering Figures 1, 2 and
        6 along with paragraphs [0032] to [0035], [0037],
        [0041] and [0055] of the application, it was apparent
        that the claim specified a particular hardware
        configuration/architecture and implementation that
        could not be equated with a general-purpose networked
        computer system.

6.   The Board interprets claim 1 in its broadest possible
        way, namely as a system comprising means for (even
        manually) inputting ("specifying", "acquiring") data,
        for storing and extracting data from storage and
        calculating a mean value using the extracted data. A
        general-purpose networked computer possesses all these
        means and, thus, meets the criteria for the system or

hardware defined in claim 1.

Furthermore, since it is the claims that define the matter for which protection is sought (Article 84 EPC), relying on features not present in the claims is not permissible when evaluating their compliance with the EPC.

Main request, inventive step (Article 56 EPC)

7.   The appellant essentially argued that claim 1 defined a plurality of technical features and, thus, was not excluded from patentability under Article 52(2) and (3) EPC. Furthermore, the mathematical algorithm for predicting a travel time, including regression analysis and probability density functions (see e.g. paragraph [0107]), contributed to the technical character of the invention and, therefore, had to be taken into account for assessing inventive step (see Guidelines for Examination, section G-II, 3.3).

As explained in paragraph [0057], the claimed system was able to collect detailed information, including weather data, and harnessed an extensive multivariate data set for the regression analysis (paragraph [0077]) to yield a reliable and accurate prediction outcome. Neither D1 (US 2007/0222595 A1) nor D6 provided any indication to amass such comprehensive data. Furthermore, the method for gathering this substantial volume of data was neither obvious, nor feasibly executable on a general-purpose computer.

The appellant further argued that the predicted outcome could be used to control parts of the travel process system, such as expediting a baggage conveyor belt or averting congestion at check machines. By feeding back

the prediction result into the system, e.g. through the activation or deactivation of certain check machines, transportation efficiency could be enhanced and energy consumption reduced.

8.   Following the reasoning of T 1148/18 - *Travel process prediction/THE AQUA ENTERPRISE COMPANY* (see reasons, points 3 to 5), which concerns the parent application, the Board judges that predicting the arrival or passage time of a traveler or baggage at a specific location based on historical data does not constitute a technical activity.

This task is performed by a person skilled in applying statistics to logistics and travel planning, rather than a technically skilled person. It encompasses tasks like parameter selection, choosing the prediction algorithm such as regression analysis or deciding on the applicable statistical tests. The latter also involves determining significance levels based on statistical distribution tables such as the chi-square distribution (see paragraph [0101]).

Notably, in the present case, the selection of parameters is not driven by technical considerations, such as their measurement or any technical effects resulting from the selection. Even if this were disclosed in the description, this aspect is not reflected in the claim, which, in the broadest interpretation, merely specifies the (manual) input of passage time and other non-technical data like flight and weather information.

The claimed means essentially outline the objective of the statistical analysis - namely collecting and storing data and using this data to perform a

statistical calculation which could be as simple as
calculating the mean value of a set of numbers like the
passage time.

Moreover, the claim does not define any feedback
mechanism using the prediction to control the
transportation system. This is, for example, different
from D6 where, based on the actual location of baggage,
the prediction is used to indicate an actual state of
the baggage such as being late or on time (see point 25
below).

As outlined in T 1148/18, *supra*, reasons, point 5, in
line with established jurisprudence the skilled person
is given the task of implementing the statistical
calculation. The claim defines that this is
accomplished through means for inputting, storing,
retrieving and calculating data. These means are
inherent in any general-purpose networked computer
system and, since no technical specifics are provided,
the Board concludes that the computer implementation of
the claimed prediction method is obvious.

9.   The Board sees no contradiction with the passages of
        the Guidelines for Examination cited by the appellant.
        Section G-II, 3.3, which addresses mathematical
        methods, specifies that these methods make a technical
        contribution only if "in the context of the invention,
        [they] produce[s] a technical effect serving a
        technical purpose". This can occur, for instance, when
        they control an X-ray apparatus, are used for deriving
        indirect measurements, or are "adapted to a specific
        technical implementation" such as assigning the
        execution of certain method steps to a GPU or
        implementing a fast Fourier transform in a non-obvious
        manner.

Neither of these scenarios applies to claim 1. It essentially covers the concept of predicting a mean time for a travel object, like a person passing through a designated point, such as an exit gate at an airport. The Board judges that, in the case at hand, a travel time prediction does not yield any technical effect serving a technical purpose, and the implementation merely involves programming the statistical method on a general-purpose computer.

Therefore, in line with established jurisprudence, factors like algorithmic efficiency, reliability or accuracy of the mathematical method in comparison to other prior-art mathematical methods are immaterial and, thus, not suitable to establish a technical effect.

10.   In the latest response, the appellant argued that "the Board does not seem to fully understand the principle of the computerized statistical prediction technology".

Consequently, it was imperative to refer to the description and accompanying Figures, which elucidated the technical meaning of the claims in defining "unique configurations and implementation in a computer". The description, for instance, highlighted the verification of a travel object's actual passage through a checkpoint, a detail not found in D6.

11.   The Board judges that, as previously mentioned, the claim covers simply computing the mean value of data. Even if the statistical calculations were delineated in intricate detail, potentially being complex and challenging to comprehend, this would not alter the Board's conclusion that these calculations, in the

present context, do not make a technical contribution to the invention.

Furthermore, the system for gathering and processing data does indeed incorporate check machines for ID reading and, in case of failure, executing error-handling procedures like recording error data or blocking passage (see paragraphs [0042] to [0045]). This system undoubtedly transcends the capabilities of a general-purpose computer. However, these features are absent from the independent claims of the main request and, as such, are immaterial to the evaluation of inventive step.

12.   For these reasons, the Board judges that the invention in claim 1 of the main request lacks an inventive step (Article 56 EPC).

Auxiliary requests 1 to 21, inventive step (Article 56 EPC)

13.   Auxiliary request 9 is the most limited among auxiliary requests 1 to 9. The Board finds it thus convenient to analyse this request first.

14.   In essence, claim 1 adds two features to claim 1 of the main request:

A.   *a means configured for checking a passage of a travel object.*

B.   *a means configured for storing an explanatory text which explains a result of a statistical calculation and which is associated with a feature of information used in the statistical calculation and a result of the statistical calculation;*
   a means configured for extracting the explanatory

text in accordance with the feature of information
actually used in the statistical calculation and the
result of the actual statistical calculation; and
     an output means configured for processing the
calculated estimate value and the extracted explanatory
text for outputting from the output means.

15.   The appellant argued that feature A was not known from
       D6. In D6, the readers of the check machines were only
       capable of detecting a baggage tag and sending a
       location-update message, which included the date and
       time, to a server. In contrast, the claimed system
       determined whether a travel object had physically
       passed through a checkpoint. This "passed or not" data
       was employed as an additional parameter in the
       statistical calculation, specifically to mitigate
       potential errors in data collection.

16.   However, in the Board's view, although the description
       does indeed elaborate on various checks performed by
       check machines (see page 13 of the appellant's latest
       reply), these are not defined in the claim. Thus a
       general-purpose networked computer system remains an
       appropriate starting point for assessing inventive
       step.

       In its broadest interpretation, feature A could
       encompass actions like ticking a box when a traveler
       passes through a passage point. One might even argue
       that this feature is implicit in recording a passage
       time, as it signifies that the traveler has indeed
       crossed the passage point.

       In any case, the Board maintains that feature A, even
       if incorporated into the statistical calculation, lacks
       technical character and therefore does not contribute

to the presence of an inventive step.

17.   Feature B pertains to the storage, retrieval, and
        presentation of an explanatory text, which explains the
        outcomes of the statistical computations.

        The Board concludes that this feature does not provide
        a technical effect for the reasons given in T 1148/18,
        supra, reasons, point 10. Furthermore, the Board cannot
        see how a text explaining a non-technical aspect,
        namely a predicted travel time, could constitute a
        technical element. This is in contrast to a text that
        explains a technical aspect, such as the internal state
        of a machine, which could potentially confer a
        technical effect.

18.   The appellant argued that the claim should be
        considered in its entirety, emphasising that the
        explanatory text offered guidance on utilising the
        calculation results. For example, the capital letters
        shown in Figure 19, such as ADVICE T, could be used by
        an operator for controlling check machines to save
        energy, increase efficiency of transportation and avoid
        congestions.

19.   The Board observes that the appellant's interpretation
        lacks any supporting examples or indications in the
        application.

        Moreover, this argument exemplifies what is commonly
        referred to as the "broken technical chain fallacy," as
        articulated in T 1670/07 - *Shopping with mobile device/
        NOKIA*, reasons, point 11, in which the purported
        technical effect hinges on the intervention or mental
        activities of the operator.

Additionally, the fact that the explanatory text may refer to a period of data collection — such as noting the absence of data for a specific month — does not constitute a technical aspect. A statistician would recognise that during such a period conducting regression analysis is infeasible. Similarly, when utilising data from winter months, it's understood that the prediction for summer months might be less precise. These considerations are inherently within the realm of statistics, a domain that, in itself, lacks a technical nature and is ineligible for patentability.

20.   For these reasons, the Board judges that the invention in claim 1 of auxiliary request 9 lacks an inventive step (Article 56 EPC).

21.   For similar reasons also auxiliary requests 1 to 8 and 10 are not inventive (Article 56 EPC).

        Specifically, auxiliary request 10 essentially mirrors auxiliary request 6, with the modification being the substitution of "an estimate value of passage time" with "a **statistical** estimate value of passage time" (emphasis added by the Board).

        When assessing inventive step of the main request, the Board has already construed the prediction as relying on a statistical calculation.

22.   Auxiliary requests 11 to 21 differ from auxiliary requests 1 to 10 in the rephrasing of independent claims 4 to 9 and 13 to 18 as dependent claims.

        Therefore, these requests lack an inventive step for the same reasons (Article 56 EPC).

Auxiliary request 22, inventive step (Article 56 EPC)

23.   Auxiliary request 22, with the sole alteration of
        substituting "predicting" with "statistically
        predicting" in claim 1, mirrors the previously refused
        auxiliary request 22. The latter request is based on
        refused auxiliary request 21 and introduces a new
        independent claim 1 that provides a more detailed
        specification of the travel process prediction system.

24.   As illustrated in Figure 1, this system encompasses a
        travel process prediction apparatus (1) responsible for
        executing the statistical calculations, check machines
        (21) tasked with detecting passages and recording
        corresponding passage times, an information acquiring
        apparatus (2) responsible for storing passage time data
        received from the check machines, a transportation
        information storing apparatus (4) dedicated to storing
        flight details, a weather information storing apparatus
        (5) designated for storing weather data, an input/
        output device (7) for presenting prediction results,
        and a communication network (N) that interconnects all
        the devices.

25.   It is common ground that D6 is a suitable starting
        point for assessing inventive step.

        In D6, although not utilised for predicting travel time
        as in the present invention, the system predicts the
        travel time of baggage when it moves from a first
        reader to a second reader - see paragraph [0032].
        Additionally, this prediction, coupled with flight
        information pertaining to the tracked baggage, is used
        to trigger an alert if the baggage is deemed lost,
        misdirected, or delayed. A central server maintains a
        table containing transit time data for every

conceivable combination of readers (paragraph [0033]).
D6 does not mention how this data is obtained. However,
the Board believes that it must be rooted in historical
data, such as the average passage time of baggage or
similar metrics.

Unlike in some other jurisdictions, the established
approach at the EPO allows for the inclusion of non-
technical requirements in defining the problem (see
e.g. Case Law Book, 10th edition 2022, I.D.4.2).
Therefore, starting from the system in D6, the skilled
person is tasked with implementing the aforementioned
non-technical requirement, specifically the statistical
method for predicting travel time (see point 7). This
also encompasses the incorporation of weather data as
an additional input parameter (see also T 1798/13 -
*Forecasting the value of a structured financial
product/SWISS REINSURANCE COMPANY LTD*, reasons, point
2.15).

The Board judges that it would have been obvious for
the skilled person to adapt the system in D6 for the
intended purpose. This involves storing already
available passage time data and other parameters like
flight and weather information, retrieving this data,
and conducting the necessary statistical calculations.
This is particularly apparent given that the claim does
not specify any non-obvious technical concepts or
implementation details.

26.   The Board, thus, concurs with the examining division's
        finding that claim 1 of auxiliary request 22 is not
        inventive over D6 (Article 56 EPC).

27.   Incidentally, the Board observes that claim 1 is
        arguably unclear. This is due, in part, to its

definition of an apparatus for storing flight and
weather information without offering further
clarification on how this data is utilised. Throughout
the preceding analysis, the Board has assumed, in
favour of the appellant, that the flight and weather
data is transmitted via the network to the prediction
apparatus and subsequently employed for statistical
calculations.

28.   The appellant argued that incorporating weather data
       improved the accuracy of the prediction (see paragraph
       [0117]). It was not obvious, without the benefit of
       hindsight, to introduce this structural feature to D6
       which solely indicated the use of a table to verify the
       status of baggage.

29.   The Board notes that prediction accuracy is a
       characteristic inherent to the algorithm and data
       employed. Since in the case at hand neither of these
       elements makes a technical contribution, prediction
       accuracy cannot be deemed a technical effect.

       As a rule, inherent properties of algorithms, such as
       computational efficiency or accuracy, when they do not
       serve a technical purpose and do not exceed a generic
       technical implementation, are not considered technical.
       Therefore, even if the utilisation of weather
       information as an additional input parameter were to
       enhance prediction accuracy, it would not contribute to
       the technical character of claim 1.

30.   In the latest response, the appellant further argued
       that, unlike D6, the inventive system had the
       capability to verify whether a travel object was
       equipped with a tag or not (see paragraphs [0029] and
       [0045]). This functionality allowed the system to

ascertain if it was in a correct state.

31.   Firstly, this aspect is not claimed. Secondly, the
        Board fails to see how the invention's system, aside
        from reading a tag associated with the travel object,
        could determine its passage (time). Finally, this
        capability is also known from D6, which, through the
        use of tags and readers, facilitates the tracking of
        baggage and the verification of its status (see, for
        instance, paragraph [0042]).

Auxiliary requests 23 to 26, inventive step (Article 56 EPC)

32.   Auxiliary requests 23 to 26 have been newly filed on
        appeal. These requests, with the exception of the
        inclusion of the phrase "in relation with movement of
        the travel object", mirror auxiliary requests 23 to 26,
        which were not admitted by the examining division under
        Rule 137(3) EPC. These latter requests are essentially
        based on the main request and auxiliary requests 1, 6
        and 7, except for some linguistic rewording.

        The reasons for their non-admittance was that the
        feature "a means for detecting an arrival, passage or
        departure of a travel object by a sensor" infringed the
        provisions of Article 123(2) EPC and that they were
        filed belatedly.

33.   The Board cannot see that the appellant's cited basis
        (Figure 1, paragraphs [0029], [0030], [0032], [0051],
        and [0056]) directly and unambiguously discloses the
        amendment. In any case, there is no literal basis for
        the amendment, as argued by the examining division (see
        point 21.1 of the decision).

        Nonetheless, the Board judges that the added feature,

despite any potential clarity concerns stemming from
the accompanying phrase "in relation with movement of
the travel object", is known from D6 (see paragraph
[0031]: " ... readers 12 are set up as 'check-points'
along the baggage travel path 13 from check-in 14 at
the origin of the trip to pick-up 15 at the destination
end of the trip").

Therefore, the Board concludes that none of the
auxiliary requests 23 to 26 are allowable due to a lack
of inventive step (Article 56 EPC).

Auxiliary request 27, admissibility (Article 12(6) RPBA)

34.   Auxiliary request 27 was not admitted into the
        examination proceedings under Rule 137(3) EPC.

        The reasons were that the request was filed late and
        not clearly allowable, since *prima facie* it did not
        meet the requirements of Article 123(2) EPC. In
        addition, the applicant already had been granted the
        opportunity to submit numerous requests.

        More specifically, the examining division found that
        the basis indicated by the applicant, that is Figures 1
        (item 21) and 5 and paragraphs [0028], [0029] and
        [0044], was the same as those given for auxiliary
        request 21, yet they did not pertain to the amendment
        introduced in claim 1 of auxiliary request 27. Notably,
        the cited passages did not encompass the feature
        "transmitting ... transportation specifying information
        and situation information".

35.   During the oral proceedings before the Board, the
        appellant further argued that a basis for this
        amendment could be found in paragraphs [0035], [0037]

and [0056] and in Figures 2 and 7. Notably, Figure 2
depicted that the information acquiring apparatus
stored passage point, event history and travel process
data which was subsequently transferred to the
prediction apparatus.

36.   The Board notes that, since auxiliary request 27 was
        not admitted in the first instance proceedings, its
        admittance into the appeal proceedings is governed by
        Article 12(6) RPBA.

        Article 12(6) RPBA states that the Board shall not
        admit requests, facts, objections or evidence which
        were not admitted in the proceedings leading to the
        decision under appeal, unless the decision not to admit
        them suffered from an error in the use of discretion or
        unless the circumstances of the appeal case justify
        their admittance.

        The Board reads the first condition of this provision
        in that "error" has to be one existing at the time of
        applying the discretion. Thus, even if the basis
        provided by the appellant during the oral proceedings
        before the Board were deemed convincing, which, in the
        Board's view, is not the case, it is the basis given to
        the examining division that is decisive.

37.   The Board judges that, in fact, the amendment is not
        directly and unambiguously derivable from that basis.
        It did not relate, as rightly noted by the examining
        division, to the transfer of data from the acquiring to
        the prediction apparatus, let alone the transfer of
        "passage time ..., transportation specifying
        information and situation information".

        Moreover, the appellant did not present any specific

circumstances that would warrant the admittance of
auxiliary request 27 on appeal under the second
condition of Article 12(6) RPBA. The Board does not
discern any such circumstances either.

In view of the above, the Board concludes that the
examining division exercised its discretion correctly
and, consequently, finds no grounds to admit auxiliary
request 27 into the appeal proceedings (Article 12(6)
RPBA).

Auxiliary requests 28 to 43, admissibility (Article 13(2) RPBA)

38.   Auxiliary requests 28 to 43 were filed in response to
        the Board's preliminary opinion and, thus, under
        Article 13(2) RPBA are only admitted if there are
        exceptional circumstances, which have been justified
        with cogent reasons by the appellant.

39.   The appellant argued that they were able to submit
        these requests only after having received "concrete
        opinions from the Board", as outlined in its
        preliminary opinion.

40.   The Board notes that the introduced amendments *prima
        facie* give rise to new objections under Article 123(2)
        EPC and are not suitable to overcome the inventive step
        objection raised in relation to the preceding requests.

        First and foremost, the inclusion of the phrase "based
        on the normal distribution, t-distribution, f-
        distribution or chi-square distribution" in all of
        these requests is not directly and unambiguously
        derivable from the original disclosure. Statistical
        distributions are only mentioned in the context of data
        transformation (paragraph [0075]) and for determining

statistical significance (see paragraphs [0095] and
[0101] to [0109]). However, this is different from
calculating an estimated passage time using regression
analysis, as claimed.

Secondly, the added features relate to the statistical
calculation method and, as such, are not pertinent to
the assessment of inventive step (see point 8 above).

41.   The appellant argued that the mentioned statistical
        distributions influenced the steps performed by the
        prediction apparatus (see Figure 16, items S603, S604
        and paragraphs [0094], [0102] or [0107]) and,
        consequently, contributed to a technical effect.

42.   However, this argument lacks persuasiveness, as the
        prediction apparatus simply executes the statistical
        calculations in line with its intended function. This
        encompasses steps related to determining a statistical
        difference between mean/variance values of various
        samples/populations and computing confidence intervals
        based on them. All of this falls within the realm of
        non-technical matters, not yielding any additional
        technical effect, and hence, is not pertinent to the
        assessment of inventive step.

43.   The Board concludes that the appellant's arguments for
        filing auxiliary requests 28 to 43 at this late stage
        of the proceedings do not represent exceptional
        circumstances justified by cogent reasons. Furthermore,
        these amendments not only introduce additional
        objections, but also fail to address the inventive step
        objection.

        As a result, the Board decides not to admit auxiliary
        requests 28 to 43 into the appeal proceedings under

Article 13(2) RPBA.

44. As none of the requests is allowable the appellant's request for remittal must be rejected.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

T. Buschek W. Chandler

Decision electronically authenticated